

BEFORE THE U.S. PATENT & TRADEMARK OFFICE
BOARD OF APPEALS AND INTERFERENCES

In re application of: **DUNN ET AL.**

Serial No.: **09/902,965**

Group Art Unit: **3749**

Filed: **July 11, 2001**

Examiner: **GRAVINI, STEPHEN**

For: **BOTTLE RACK**

Mail Stop Appeal Brief- Patents
Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICANT'S BRIEF ON APPEAL

Sir:

This is an appeal from the Office Action dated November 23, 2005. Appellant Munchkin, Inc. respectfully submits that the rejections therein were in error, and should be overturned upon *de novo* review, for the reasons set forth herein.

I. The Real Party in Interest

The Real Party in Interest is Munchkin, Inc., a Delaware corporation having its primary place of business in North Hills, California.

II. Related Appeals and Interferences

A related appeal has been filed for Reissue Application Serial No. 09/902,904. No related interference exists.

III. The Status of the Claims

Claims 5-15 are pending in this Application. Claims 5-15 stand rejected, and the rejection of claims 5-15 is being appealed.

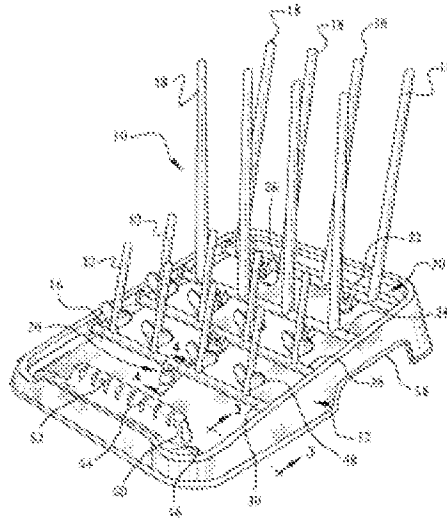
IV. The Status of Any Amendments Filed After Final Rejection.

There are none.

V. Summary of Claimed Subject Matter

With respect to independent claim 5, the invention is an apparatus for supporting baby bottles and related accessories for drying. It includes a tray 12, a plurality of pegs 18 for supporting baby bottles and at least one axle 22, 24, 28 or 30 for mounting the pegs 18. As shown in Figs. 1 and 2, the pegs 18 are movable between a first operative position, where the pegs extend outwardly and a second storage position, where the “entire” pegs are positioned so as to be “adjacent” to the upper portion of the tray 12. Additionally, the pegs 18 are mounted for “common arcuate movement between” the first and second positions on the respective axles 22, 24, 28 or 30. The axle 22, 24, 28 or 30 is “mounted for rotation within a pair of opposed journal holes that are defined in side walls of the tray 12. The journal holes are elevated with respect to an upper portion 16 of the tray 12 so as not to receive water from the upper portion 16 of the tray 12.”

Figure 1 of '548 Patent



In independent claim 13 the invention is defined as an apparatus for supporting articles and related accessories for drying that includes a tray 12, a plurality of pegs 18 for supporting baby bottles and at least two axles 22, 24, 28 or 30 for mounting the pegs 18. As shown in Figs. 1 and 2 depicting a preferred embodiment of the invention, the pegs 18 are movable between a first operative position, where the pegs extend outwardly and a second storage position, where the “entire” pegs are placed “adjacent” to an upper portion 16 of the tray 12. The pegs 18 are mounted for “common arcuate movement between” the two positions about at least two of the axles 22, 24, 28 or 30 and are oriented so that movement of the pegs 18 on a first of the axles 22, 24, 28 or 30 when moving from the first storage position to the second operative position is substantially in the same rotational direction as movement of the pegs 18 on a second of the axles 22, 24, 28 or 30 when moving from the first storage position to said second operative position.

Appellant's use of reference numerals and other references to the preferred embodiment in this summary was mandated by Patent and Trademark Office regulations and should not be

construed as an admission that the interpretation of the claims should be limited to be structure so referenced.

VI. Grounds of Rejection to be Reviewed on Appeal

Appellant believes that the various grounds of rejection may be concisely stated as follows:

Rejection of Claims 5-15 Under §102(b) Based on G.B. Patent No. 160,098 to Slipp et al. or U.S. Patent No. 2,472,028 to Son

Issue 1: Have claims 5-12 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by G.B. Patent No. 160,098 to Slipp et al.?

Issue 2: Have claims 13-15 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by G.B. Patent No. 160,098 to Slipp et al.?

Issue 3: Have claims 5-12 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,472,028 to Son?

Issue 4: Have claims 13-15 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,472,028 to Son?

VII. Grouping of Claims

Appellant respectfully submits that each of claims 5-15 should stand or fall alone for purposes of appellate consideration. No claims shall stand or fall together.

VIII. Argument -- The Rejection and Appellant's Response

Rejection of Claims 5-15 Under §102(b) Based on G.B. Patent No. 160,098 to Slipp et al. or U.S. Patent No. 2,472,028 to Son

Issue 1: Have claims 5-12 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by G.B. Patent No. 160,098 to Slipp et al.?

Claim 5 is an independent claim for rejected dependent claims 6-12 and is reproduced as follows for the convenience of the Examiners-in-Chief:

5. An apparatus for supporting baby bottles and related accessories for drying, comprising:

a tray having a bottom portion that is adapted to be supported by an underlying surface, an upper portion and at least two sidewalls;

a plurality of pegs extending outwardly from said upper portion, each of said pegs being sized and arranged so as to be able to support a baby bottle; and

at least one axle for mounting said pegs for common arcuate movement between a first storage position, wherein said entire peg is positioned adjacent to said upper portion for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper portion, said axle being mounted for rotation within a pair of opposed journal holes that are defined in said sidewalls, said journal holes being elevated with respect to said upper portion of said tray so as not to receive water from said upper portion of said tray.

The Office Action of November 23, 2005 has rejected independent claim 5 under 35 U.S.C. §102(b), but did not offer any detailed explanation for the rejection basis other than it was based on G.B. Patent No. 160,098 to Slipp et al. (hereinafter the Slipp et al. reference).

The Slipp et al. reference fails to make a *prima facie* case of anticipation. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Among other things, independent claim 5 explicitly and positively recites that “said entire peg is positioned adjacent to said upper portion for storage and packaging of said apparatus.” With respect to this claim limitation, since the Office Action has not provided any explanation, Appellant has been forced to turn to the comments that were provided in the Office Action of November 22, 2005 for related reissue application (09/902,904). According to those comments, which were also referring to the Slipp et al. reference:

“said apparatus can conveniently be folded for packaging and storage purposes as expressly shown in figures 3 & 4 and expressly discussed on the first page of that reference in lines 17-28 and on the second page lines 21-26”

Lines 17-28 of the Slipp et al. reference generally disclose “two vertical folding side frames, hinged at the side of a trough.” Slipp et al. also discloses “horizontal bars **e**” which “fit snugly within the length of the trough **a** to the ends of which it is pivoted as indicated at **f**” as shown in Figures 1 and 3. Lines 21-26 of the Slipp et al. reference further disclose that the pegs **c** and **d** on the bars **e** are extended and folded as respectively illustrated in Figures 3 and 4.

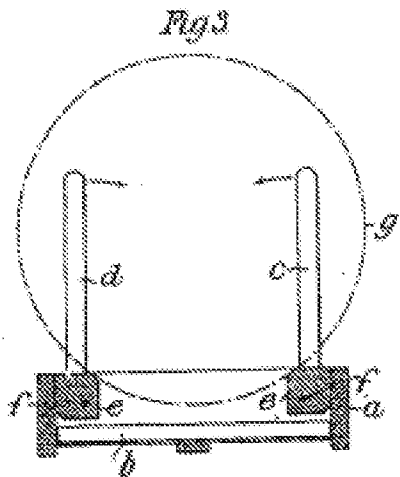


FIG. 3 OF SLIPP ET AL.

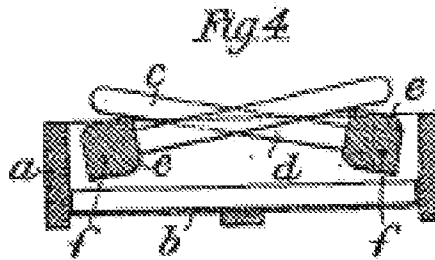


FIG. 4 OF SLIPP ET AL.

Although “the rack occupies a relatively small[er] space” in the folded position that is shown in Figure 4 of the reference than it does in the extended position that is shown in Figure 3, a significant portion of the pegs **c** and **d** remain positioned well above the trough **a** when the rack is in the folded position. In other words, the entire length of the pegs **c** and **d** is not positioned so as to be adjacent to the upper face of the tray when the rack is in the storage position that is shown in Figure 4.

Several design factors are working together in Slipp et al. to keep the distal end portions of pegs **c** and **d** significantly separated from the upper face of the tray when the rack is in the storage position shown in Figure 4. As can readily be visualized by viewing Figure 4, downward motion and positioning of the pegs **c** and **d** is effectively limited by the presence of the large rotatable bars **e** that support the adjacent set of pegs. These rotatable bars **e** are fairly bulky and also are configured to be rectangular in cross-section. As a result, they present a much more formidable barrier to downward travel of the pegs **c** and **d** than would a smaller, basic axle that has a cylindrical shape. In addition, the relatively narrow spacing between the rotatable bars **e**, the thickness of the pegs **c** and **d** and the elevation of the axis of rotation of the rotatable bars **e** all contribute to the significant separation of the distal or outboard ends of the pegs **c** and **d** from the upper face of the tray when the rack is in the storage position shown in Figure 4.

In sharp contrast, Appellant's independent claim 5 explicitly recites that “said entire peg is positioned adjacent to said upper portion for storage and packaging of said apparatus [emphasis added].” Clearly, the Slipp et al. reference fails to disclose or suggest this critical limitation that is contained within Appellants independent claim 5. In fact, the reference teaches away from this limitation by stating on page 1, lines 35-40 that the center of gravity of the bars **e** is preferably not in the same vertical plane as the axes of the pivots, so that the rack will remain in the open position without the aid of struts. Constructing the bars **e** according to this teaching will maximize the bulkiness of the bars **e** (this would be necessary to provide distance between the center of rotation and the center of gravity), thereby forcing the distal or outboard ends of the pegs **c** and **d** further away from the upper face of the tray when the rack is in the storage position shown in Figure 4.

Slipp et al. discloses that only some portions of the pegs **c** and **d** are folded adjacent to the upper face of the tray, but that significant other portions of the pegs **c** and **d** are not placed adjacent to the upper portion of the tray. It appears from Figure 4 of the Slipp et al. reference that approximately half of the length of the pegs **c** and **d** will remain above the side wall of the trough **a** and the pivot axis **f** of the rotatable horizontal bar **e** when the rack is in the folded or storage position.

For these reasons, Appellant respectfully submits that the Slipp et al. reference fails to anticipate independent claim 5. Accordingly, Appellant respectfully requests the Board to overturn the prior art rejection of independent claim 5 based on Slipp et al.

Dependent claims 6-12 ultimately depend from independent claim 5 and incorporate the patentable features of independent claim 5 that have been discussed above.

Dependent claim 6 directly depends from claim 5 and additionally recites “frictional means connected to said axle for frictionally engaging said upper portion of said tray when said pegs are moved between said first storage position and said second operative position.” This aspect of the invention is not disclosed in Slipp et al., which uses an imbalance between the rotational axes and the center of gravity of the rotatable bars **e** in order to maintain the pegs **c** and **d** in the upright position during use. In other words, Slipp et al. does not need friction to retard motion of the pigs between the operative and the storage positions, and there is no disclosure or suggestion anywhere in the reference that such friction could be provided with respect to the upper surface of the tray or elsewhere. It could be argued that a small amount of friction would necessarily have to take place at the pivot locations **f** that are provided at the outboard ends of the rotatable bars **e** in Slipp et al., but Appellant would point out that any such friction would not be occurring with respect to the “upper portion of the tray” has Appellant has consistently defined this term throughout the prosecution file history of the original patent application and this reissue patent application.

Appellant respectfully submits that claim 6 patentably defines over the prior art of record for the reasons set forth above with regard to independent claim 5, and by virtue of the significant additional limitations that are set forth therein.

Dependent claim 7 depends from claim 6 and further specifies that the “frictional means comprises a cam member connected to said axle and having a surface that is constructed and arranged to bear against said upper portion of said tray.” There is clearly no such structure disclosed or suggested in any way in the Slipp et al. reference. Appellant respectfully submits that claim 7 patentably defines over the prior art of record for the reasons set forth above in regard to claims 5 and 6, and by virtue of the significant additional limitations that are set forth therein.

Dependent claim 8 directly depends from claim 5 and further specifies that the frictional means bears against a horizontal portion of the upper portion of the tray. There is clearly no such structure disclosed or suggested in any way in the Slipp et al. reference. Appellant respectfully submits that claim 7 patentably defines over the prior art of record for the reasons set forth above in regard to claim 5, and by virtue of the significant additional limitations that are set forth therein.

Dependent claim 9 directly depends from claim 5 and further specifies location means connected to the axle for locking the pegs in the second, operative position. This aspect of the invention is not disclosed in Slipp et al., which again uses an imbalance between the rotational axes and the center of gravity of the rotatable bars **e** in order to maintain the pegs **c** and **d** in the upright position during use. Appellant respectfully submits that claim 9 patentably defines over the prior art of record for the reasons discussed above with regard to independent claim 5, and by virtue of the significant additional limitations that are contained therein.

Dependent claim 10 depends from claim 9 and further specifies that the location means includes a cam member that is connected to the axle having a first surface that contacts a cam stop surface that is defined in the upper surface of the tray. There is clearly no such structure disclosed or suggested in any way in the Slipp et al. reference. Appellant respectfully submits that claim 10 patentably defines over the prior art of record for the reasons set forth above in regard to claim 9, and by virtue of the significant additional limitations that are set forth therein.

Dependent claim 11 depends from claim 10 and further specifies that the cam stop surface is elevated with respect to adjacent areas of the upper surface of the tray. There is clearly

no such structure disclosed or suggested in any way in the Slipp et al. reference. Appellant respectfully submits that claim 11 patentably defines over the prior art of record for the reasons set forth above in regard to claims 5, 9 and 10, and by virtue of the significant additional limitations that are set forth therein.

Dependent claim 12 depends from claim 10 and further specifies that the frictional means includes a second surface on the cam member. Claim 12 further specifies that the second surface is constructed and arranged to bear against the upper face of said tray when the peg is moved between said first storage position and said second operative position. There is clearly no such structure disclosed or suggested in any way in the Slipp et al. reference. Appellant respectfully submits that claim 12 patentably defines over the prior art of record for the reasons set forth above in regard to claims 5, 9 and 10, and by virtue of the significant additional limitations that are set forth therein.

For the reasons stated above, Appellant respectfully requests the Board to overturn the presently applied §102(b) rejections of claims 5-12.

Issue 2: Have claims 13-15 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by G.B. Patent No. 160,098 to Slipp et al.?

Claim 13 is the independent claim for rejected dependent claims 14, 15 and is reproduced as follows for the convenience of the Examiners-in-Chief:

13. An apparatus for supporting articles for drying, comprising:

a tray having a bottom portion that is adapted to be supported by an underlying surface and an upper portion;

a plurality of pegs extending outwardly from said upper portion, each of said pegs being sized and arranged so as to be able to support a baby bottle; and

at least two axles, each of said axles being connected to at least two of said pegs for mounting said pegs for common arcuate movement between a first storage position, wherein said entire peg is positioned substantially adjacent to said upper portion for storage and packaging of said apparatus, and a second, operative position, and wherein said axles are oriented so that movement of said pegs on a first of said axles when moving from said first storage position to said second operative position is substantially in the same rotational direction as movement of said pegs on a second

of said axles when moving from said first storage position to said second operative position.

The Office Action of November 23, 2005 has rejected independent claim 13 under 35 U.S.C. §102(b), but did not offer any detailed explanation for the above rejection basis with respect to the Slipp et al. reference.

Slipp et al. fails to make a *prima facie* case of anticipation. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Among other things, independent claim 13 explicitly and positively recites that “said entire peg is positioned adjacent to said upper portion for storage and packaging of said apparatus.” With respect to this claim limitation, since the Office Action has not provided any explanation, Appellant has been forced to turn to the comments that were provided in the Office Action of November 22, 2005 for related reissue application (09/902,904). According to those comments, which were also referring to the Slipp et al. reference:

“said apparatus can conveniently be folded for packaging and storage purposes as expressly shown in figures 3 & 4 and expressly discussed on the first page of that reference in lines 17-28 and on the second page lines 21-26”

Lines 17-28 of the Slipp et al. reference generally disclose “two vertical folding side frames, hinged at the side of a trough.” Slipp et al. also discloses “horizontal bars **e**” which “fit snugly within the length of the trough **a** to the ends of which it is pivoted as indicated at **f**” as shown in Figures 1 and 3. Lines 21-26 of the Slipp et al. reference further disclose that the pegs **c** and **d** on the bars **e** are extended and folded as respectively illustrated in Figures 3 and 4.

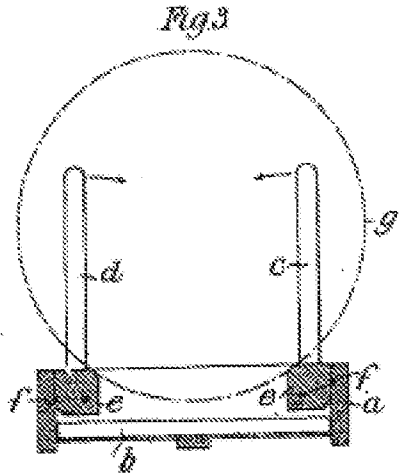


FIG. 3 OF SLIPP ET AL.

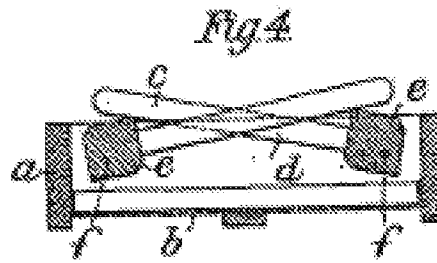


FIG. 4 OF SLIPP ET AL.

Although “the rack occupies a relatively small[er] space” in the folded position that is shown in Figure 4 of the reference than it does in the extended position that is shown in Figure 3, a significant portion of the pegs **c** and **d** remain positioned well above the trough **a** when the rack is in the folded position. In other words, the entire length of the pegs **c** and **d** is not positioned so as to be adjacent to the upper face of the tray when the rack is in the storage position that is shown in Figure 4.

Several design factors are working together in Slipp et al. to keep the distal end portions of pegs **c** and **d** significantly separated from the upper face of the tray when the rack is in the storage position shown in Figure 4. As can readily be visualized by viewing Figure 4, downward motion and positioning of the pegs **c** and **d** is effectively limited by the presence of the large rotatable bars **e** that support the adjacent set of pegs. These rotatable bars **e** are fairly bulky and also are configured to be rectangular in cross-section. As a result, they present a much more formidable barrier to downward travel of the pegs **c** and **d** than would a smaller, basic axle that has a cylindrical shape. In addition, the relatively narrow spacing between the rotatable bars **e**, the thickness of the pegs **c** and **d** and the elevation of the axis of rotation of the rotatable bars **e** all

contribute to the significant separation of the distal or outboard ends of the pegs **c** and **d** from the upper face of the tray when the rack is in the storage position shown in Figure 4.

In sharp contrast, Appellant's independent claim 13 explicitly recites that “said entire peg is positioned adjacent to said upper portion for storage and packaging of said apparatus [emphasis added].” Clearly, the Slipp et al. reference fails to disclose or suggest this critical limitation that is contained within Appellants independent claim 13. In fact, the reference teaches away from this limitation by stating on page 1, lines 35-40 that the center of gravity of the bars **e** is preferably not in the same vertical plane as the axes of the pivots, so that the rack will remain in the open position without the aid of struts. Constructing the bars **e** according to this teaching will maximize the bulkiness of the bars **e** (this would be necessary to provide distance between the center of rotation and the center of gravity), thereby forcing the distal or outboard ends of the pegs **c** and **d** further away from the upper face of the tray when the rack is in the storage position shown in Figure 4.

Slipp et al. discloses that only some portions of the pegs **c** and **d** are folded adjacent to the upper face of the tray, but that significant other portions of the pegs **c** and **d** are not placed adjacent to the upper portion of the tray. It appears from Figure 4 of the Slipp et al. reference that approximately half of the length of the pegs **c** and **d** will remain above the side wall of the trough **a** and the pivot axis **f** of the rotatable horizontal bar **e** when the rack is in the folded or storage position.

For these reasons, Appellant respectfully submits that the Slipp et al. reference fails to anticipate independent claim 13. Accordingly, Appellant respectfully requests the Board to overturn the prior art rejection of independent claim 13 based on Slipp et al.

Furthermore, independent claim 13 explicitly recites that “said axles are oriented so that movement of said pegs on a first of said axles when moving from said first storage position to said second operative position is substantially in the same rotational direction as movement of said pegs on a second of said axles when moving from said first storage position to said second operative position.” This limitation requires that movement of the pegs be in the same

rotational direction when the pegs are moved from the “storage position” to the “operative position.” As shown in Figures 1 and 2 of the ‘548 patent, when the pegs 18 on different axles rotate “from said first storage position to said second operative position,” the pegs 18 rotate in “substantially in the same [counterclockwise] rotational direction [emphasis added].”

In contrast, Figures 3 and 4 of the Slipp et al. reference disclose that the pegs **d** rotate in the counterclockwise direction while the pegs **c** rotate in the clockwise direction as the pegs **c** and **d** travel “from said first storage position to said second operative position.” In other words, the pegs **c** and **d** fail to move “substantially in the same rotational direction [emphasis added]” as specified in independent claim 13. For this reason, Appellant respectfully submits that it is clear that the Slipp et al. reference fails to anticipate independent claim 13.

Accordingly, Appellant respectfully requests the Board to overturn the currently pending §102 rejection of independent claim 13 based on the Slipp et al. reference.

Dependent claims 14 and 15 ultimately depend from independent claim 13 and incorporate the above discussed patentable features of independent claim 13.

Claim 14 depend directly from claim 13 and further specifies that the apparatus includes a cutout area on a side of the apparatus for facilitating lifting of the apparatus by a user. The bottom of the apparatus that is disclosed in Slipp et al. appears to be substantially flat. There is no cutout area disclosed or suggested in the reference, nor is there any space in which a cutout area could be added that would be sufficient for facilitating lifting of the apparatus for a user. Accordingly, it is clear that the Slipp et al. reference does not disclose or suggest the additional limitation set forth in claim 14. In fact, the basic configuration of the apparatus that is disclosed in Slipp et al. teaches away from any hypothetical proposed modification of that apparatus to include a cutout area because the side walls are not sufficiently elevated to have room for a cutout area that would be sufficiently large to facilitate lifting of the apparatus by a user. Accordingly, Appellant respectfully submits that claim 14 patentably defines over Slipp et al. for the reasons set forth above in regard to independent claim 13 and by virtue of the significant additional limitations that are set forth therein.

Claim 15 depends from claim 14 and further specifies that the cutout area is positioned beneath one end of the upper face of the tray. Clearly, Slipp et al. does not disclose or suggest this feature. Appellant respectfully submits that claim 15 patentably defines over Slipp et al. for the reasons discussed above in regard to claims 13 and 14, and by virtue of the significant additional limitations that are contained therein.

For the reasons stated above, Appellant respectfully requests the Board to overturn the §102(b) anticipation rejections based on Slipp et al. that have been applied to claims 13-15.

Issue 3: Have claims 5-12 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,472,028 to Son?

Claim 5 is the independent claim for rejected dependent claims 6-12 and is reproduced as follows for the convenience of the Examiners-in-Chief:

5. An apparatus for supporting baby bottles and related accessories for drying, comprising:

 a tray having a bottom portion that is adapted to be supported by an underlying surface, an upper portion and at least two sidewalls;

 a plurality of pegs extending outwardly from said upper portion, each of said pegs being sized and arranged so as to be able to support a baby bottle; and

 at least one axle for mounting said pegs for common arcuate movement between a first storage position, wherein said entire peg is positioned adjacent to said upper portion for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper portion, said axle being mounted for rotation within a pair of opposed journal holes that are defined in said sidewalls, said journal holes being elevated with respect to said upper portion of said tray so as not to receive water from said upper portion of said tray.

The Office Action of November 23, 2005 has rejected independent claim 5 under 35 U.S.C. §102(b) based on U.S. Patent No. 2,472,028 to Son (herein after the Son reference), but did not offer any detailed explanation for the basis of that rejection.

The Son reference fails to make a *prima facie* case of anticipation. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Among other things, independent claim 5 is limited to “an apparatus for supporting baby bottles and related accessories for drying” and explicitly recites that “each of said pegs [is] sized and arranged so as to be able to support a baby bottle.” In other words, independent claim 5 specifically calls for the “pegs” to be “sized...to support a baby bottle [emphasis added]”. Although the size of the baby bottles may vary, the diameter of the opening of a typical conventional baby bottle is well over one inch while the height of such a conventional baby bottle is typically 5 inches or more. In order to support such a conventional baby bottle, the pegs must be substantially constructed as described on lines 63-65, column 2 of U.S. Patent No. 6,125,548 (herein after the ‘548 patent).

The Son reference has absolutely nothing to do with baby bottles and related accessories for drying as independent claim 5 sets forth. In fact, it has nothing to do with drying articles at all. Instead, Son generally discloses “a tray ... solely for use in packaging hypodermic needles or in sterilizing them, [and] in its preferred embodiment, it is adapted for both uses to provide maximum convenience in carrying them and in preparing them for use.” As disclosed at lines 17-20, column 2 of the Son reference, “[t]he end of each finger [or peg] is bent back to establish a resilient head 16 as adapted to enter the bore 17 of a needle hub 18 to firmly connect it to the member 11 [as illustrated in Figs 1 and 2].”

A hypodermic needle such as those that are to be packaged and sterilized using the apparatus that is disclosed the Son reference are significantly different in their size and in their shape from any type of baby bottle or baby bottle accessory of which Appellant is aware. The limitation that is set forth in independent claim 5 that “the pegs” must be “sized...to support a baby bottle” is clearly not anticipated by the Son reference. The fingers or pegs that are used in the Son reference to support the hypodermic needles would be completely inadequate for supporting a baby bottle. It is clear that the hypodermic needle that is depicted in Figure 1 of the

reference is much smaller than a conventional baby bottle simply by comparing the scale of the hypodermic needle 18 to the broken line depiction of a user's forefinger and thumb that also appears in Figure 1. Typically, the opening of a conventional baby bottle is large enough so that a user could insert his or her forefinger and thumb together into the opening. The length of each of the fingers or pegs that are shown in Figure 1 of the reference is about the same as the length of the thumb fingernail. Clearly, a finger or peg of this length would not even make contact with the inside wall of a conventional baby bottle, let alone preventing it from toppling.

In addition, independent claim 5 positively recites that the tray has at least two sidewalls. The tray that is disclosed in the Son reference does not have sidewalls of any significance.

Claim 5 also specifies that "said axle [is] mounted for rotation within a pair of opposed journal holes that are defined in said sidewalls." It also requires that "said journal holes being elevated with respect to said upper portion of said tray."

The Son reference clearly does not disclose or suggest journal holes that are defined in sidewalls of a tray. The reference discloses at lines 35-39, column 1 that "the hinge means connect[s] each member 11 to the base 5...such that the member is held resiliently in either its upright or flat position." Although the Son reference further discloses at lines 27-28, column 2 that "any type of hinge means may be used to connect the members 11 to the base 5," the Son reference fails to disclose how the hinge means is connected to the base. Neither Figure 1 nor Figure 2 of the Son reference discloses or suggests "journal holes" on the "sidewalls" as called for by independent claim 5. In fact, no sidewalls are even disclosed or suggested.

Given the fact that the Son reference does not disclose or suggest sidewalls or journal holes that are defined in sidewalls, it is not surprising that the reference fails to provide any teaching that the journal holes are elevated with respect to the upper portion of the tray.

Accordingly, there are several elements set forth in independent claim 5 that are not disclosed or suggested in the Son reference. The reference clearly does not anticipate independent claim 5 or any of the claims that depend therefrom. For these reasons, Appellant

respectfully requests the Board to overturn the §102(b) anticipation rejection that has been applied to independent claim 5.

Dependent claims 6-12 ultimately depend from independent claim 5 and incorporate the above discussed patentable features of independent claim 5.

Dependent claim 6 directly depends from claim 5 and additionally recites “frictional means connected to said axle for frictionally engaging said upper portion of said tray when said pegs are moved between said first storage position and said second operative position.” This aspect of the invention is not disclosed in Son, in which the supporting fingers apparently never come into contact with the top surface of the tray. Appellant respectfully submits that claim 6 patentably defines over the prior art of record for the reasons set forth above with regard to independent claim 5, and by virtue of the significant additional limitations that are set forth therein.

Dependent claim 7 depends from claim 6 and further specifies that the “frictional means comprises a cam member connected to said axle and having a surface that is constructed and arranged to bear against said upper portion of said tray.” There is clearly no such structure disclosed or suggested in any way in the Son reference. Appellant respectfully submits that claim 7 patentably defines over the prior art of record for the reasons set forth above in regard to claims 5 and 6, and by virtue of the significant additional limitations that are set forth therein.

Dependent claim 8 directly depends from claim 5 and further specifies that the frictional means bears against a horizontal portion of the upper portion of the tray. There is clearly no such structure disclosed or suggested in any way in the Son et al. reference. Appellant respectfully submits that claim 7 patentably defines over the prior art of record for the reasons set forth above in regard to claim 5, and by virtue of the significant additional limitations that are set forth therein.

Dependent claim 9 directly depends from claim 5 and further specifies location means connected to the axle for locking the pegs in the second, operative position. Appellant respectfully submits that claim 9 patentably defines over the prior art of record for the reasons

discussed above with regard to independent claim 5, and by virtue of the significant additional limitations that are contained therein.

Dependent claim 10 depends from claim 9 and further specifies that the location means includes a cam member that is connected to the axle having a first surface that contacts a cam stop surface that is defined in the upper surface of the tray. There is clearly no such structure disclosed or suggested in any way in the Son reference, in which the support fingers apparently never touch the upper surface of the tray. Appellant respectfully submits that claim 10 patentably defines over the prior art of record for the reasons set forth above in regard to claim 9, and by virtue of the significant additional limitations that are set forth therein.

Dependent claim 11 depends from claim 10 and further specifies that the cam stop surface is elevated with respect to adjacent areas of the upper surface of the tray. There is clearly no such structure disclosed or suggested in any way in the Son reference, in which the support fingers never touch the upper surface of the tray and in which the upper surface of the tray is substantially flat except for cannula support members 21. Appellant respectfully submits that claim 11 patentably defines over the prior art of record for the reasons set forth above in regard to claims 5, 9 and 10, and by virtue of the significant additional limitations that are set forth therein.

Dependent claim 12 depends from claim 10 and further specifies that the frictional means includes a second surface on the cam member. Claim 12 further specifies that the second surface is constructed and arranged to bear against the upper face of said tray when the peg is moved between said first storage position and said second operative position. There is clearly no such structure disclosed or suggested in any way in the Slipp et al. reference. Appellant respectfully submits that claim 12 patentably defines over the prior art of record for the reasons set forth above in regard to claims 5, 9 and 10, and by virtue of the significant additional limitations that are set forth therein.

For the reasons discussed above, Appellant respectfully requests the Board to overturn the currently pending §102(b) rejections of claims 5-12 based on the Son et al. Reference.

Issue 4: Have claims 13-15 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,472,028 to Son?

Claim 13 is the independent claim for rejected dependent claims 14, 15 and is reproduced as follows for the convenience of the Examiners-in-Chief:

13. An apparatus for supporting articles for drying, comprising:

a tray having a bottom portion that is adapted to be supported by an underlying surface and an upper portion;

a plurality of pegs extending outwardly from said upper portion, each of said pegs being sized and arranged so as to be able to support a baby bottle; and

at least two axles, each of said axles being connected to at least two of said pegs for mounting said pegs for common arcuate movement between a first storage position, wherein said entire peg is positioned substantially adjacent to said upper portion for storage and packaging of said apparatus, and a second, operative position, and wherein said axles are oriented so that movement of said pegs on a first of said axles when moving from said first storage position to said second operative position is substantially in the same rotational direction as movement of said pegs on a second of said axles when moving from said first storage position to said second operative position.

The Office Action of November 23, 2005 has rejected independent claim 13 under 35 U.S.C. §102(b) based on U.S. Patent No. 2,472,028 to Son but did not offer any detailed explanation in support of the rejection.

Among other things, independent claim 13 is limited to “an apparatus for supporting baby bottles and related accessories for drying” and explicitly recites that “each of said pegs [is] sized and arranged so as to be able to support a baby bottle.” In other words, independent claim 13 specifically calls for the “pegs” to be “sized...to support a baby bottle [emphasis added]”. Although the size of the baby bottles may vary, the diameter of the opening of a typical conventional baby bottle is well over one inch while the height of such a conventional baby bottle is typically 5 inches or more. In order to support such a conventional baby bottle, the pegs must be substantially constructed as described on lines 63-65, column 2 of U.S. Patent No. 6,125,548 (herein after the ‘548 patent).

The Son reference has absolutely nothing to do with baby bottles and related accessories for drying as independent claim 13 sets forth. In fact, it has nothing to do with drying articles at all. Instead, Son generally discloses “a tray ... solely for use in packaging hypodermic needles or in sterilizing them, [and] in its preferred embodiment, it is adapted for both uses to provide maximum convenience in carrying them and in preparing them for use.” As disclosed at lines 17-20, column 2 of the Son reference, “[t]he end of each finger [or peg] is bent back to establish a resilient head 16 as adapted to enter the bore 17 of a needle hub 18 to firmly connect it to the member 11 [as illustrated in Figs 1 and 2].”

A hypodermic needle such as those that are to be packaged and sterilized using the apparatus that is disclosed the Son reference are significantly different in their size and in their shape from any type of baby bottle or baby bottle accessory of which Appellant is aware. The limitation that is set forth in independent claim 5 that “the pegs” must be “sized...to support a baby bottle” is clearly not anticipated by the Son reference. The fingers or pegs that are used in the Son reference to support the hypodermic needles would be completely inadequate for supporting a baby bottle. It is clear that the hypodermic needle that is depicted in Figure 1 of the reference is much smaller than a conventional baby bottle simply by comparing the scale of the hypodermic needle 18 to the broken line depiction of a user's forefinger and thumb that also appears in Figure 1. Typically, the opening of a conventional baby bottle is large enough so that a user could insert his or her forefinger and thumb together into the opening. The length of each of the fingers or pegs that are shown in Figure 1 of the reference is about the same as the length of the thumb fingernail. Clearly, a finger or peg of this length would not even make contact with the inside wall of a conventional baby bottle, let alone preventing it from toppling.

Furthermore, independent claim 13 explicitly recites that “said axles are oriented so that movement of said pegs on a first of said axles when moving from said first storage position to said second operative position is substantially in the same rotational direction as movement of said pegs on a second of said axles when moving from said first storage position to said second operative position.” This limitation requires that movement of the pegs be in the same rotational direction when the pegs are moved from the “storage position” to the “operative

position.” As shown in Figures 1 and 2 of the ‘548 patent, when the pegs 18 on different axles rotate “from said first storage position to said second operative position,” the pegs 18 rotate in “substantially in the same [counterclockwise] rotational direction [emphasis added].”

In stark comparison, Figures 1 and 2 of the Son reference disclose that the members 15 on the right side rotate in the counterclockwise direction while the members 15 on the left side rotate in the clockwise direction as the members 15 travel a storage position to an operative position. In other words, the members 15 fail to move “substantially in the same rotational direction [emphasis added]” as called for by independent claim 13. For this additional reason, it is clear that the Son reference fails to anticipate Appellant's independent claim 13.

For the reasons stated above, Appellant respectfully requests the Board to overturn the rejection of claim 13 based on the Son reference.

Dependent claims 14 and 15 ultimately depend from independent claim 13 and incorporate the above discussed patentable features of independent claim 13.

Claim 14 depend directly from claim 13 and further specifies that the apparatus includes a cutout area on a side of the apparatus for facilitating lifting of the apparatus by a user. The bottom of the apparatus that is disclosed in Son appears to be substantially flat. There is no cutout area disclosed or suggested in the reference, nor is there any space in which a cutout area could be added that would be sufficient for facilitating lifting of the apparatus for a user. Accordingly, it is clear that the Son reference does not disclose or suggest the additional limitation set forth in claim 14. In fact, the basic configuration of the apparatus that is disclosed in Son teaches away from any hypothetical proposed modification of that apparatus to include a cutout area because the side walls are not sufficiently elevated to have room for a cutout area that would be sufficiently large to facilitate lifting of the apparatus by a user. Accordingly, Appellant respectfully submits that claim 14 patentably defines over Son for the reasons set forth above in regard to independent claim 13 and by virtue of the significant additional limitations that are set forth therein.

Claim 15 depends from claim 14 and further specifies that the cutout area is positioned beneath one end of the upper face of the tray. Clearly, Son does not disclose or suggest this feature. Appellant respectfully submits that claim 15 patentably defines over Slipp et al. for the reasons discussed above in regard to claims 13 and 14, and by virtue of the significant additional limitations that are contained therein.

For the reasons stated above, Appellant respectfully requests the Board to overturn the §102(b) anticipation rejections based on Son that have been applied to claims 13-15.

IX. Conclusion

For the foregoing reasons, Appellant respectfully submits that each of the rejections should be reversed, and all claims allowed, and such a decision is respectfully solicited.

Respectfully submitted,

/JLK/

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X. APPENDIX- CLAIMS ON APPEAL

5. An apparatus for supporting baby bottles and related accessories for drying, comprising:
 - a tray having a bottom portion that is adapted to be supported by an underlying surface, an upper portion and at least two sidewalls;
 - a plurality of pegs extending outwardly from said upper portion, each of said pegs being sized and arranged so as to be able to support a baby bottle; and
 - at least one axle for mounting said pegs for common arcuate movement between a first storage position, wherein said entire peg is positioned adjacent to said upper portion for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper portion, said axle being mounted for rotation within a pair of opposed journal holes that are defined in said sidewalls, said journal holes being elevated with respect to said upper portion of said tray so as not to receive water from said upper portion of said tray.
6. An apparatus according to claim 5, further comprising frictional means connected to said axle for frictionally engaging said upper portion of said tray when said pegs are moved between said first storage position and said second operative position.
7. An apparatus according to claim 6, wherein said frictional means comprises a cam member connected to said axle and having a surface that is constructed and arranged to bear against said upper portion of said tray.
8. An apparatus according to claim 5, wherein said frictional means bears against a horizontal portion of said upper portion of said tray.
9. An apparatus according to claim 5, further comprising location means connected to said axle for locking said pegs in said second, operative position.

10. An apparatus according to claim 9, wherein said location means comprises a cam member connected to said axle having a first surface that contacts a cam stop surface that is defined in said upper face of said tray.

11. An apparatus according to claim 10, wherein said cam stop surface is elevated with respect to adjacent areas of said upper face of said tray.

12. An apparatus according to claim 10, wherein said frictional means comprises a second surface on said cam member, said second surface being constructed and arranged to bear against the upper face of said tray when said peg is moved between said first storage position and said second operative position.

13. An apparatus for supporting articles for drying, comprising:

a tray having a bottom portion that is adapted to be supported by an underlying surface and an upper portion;

a plurality of pegs extending outwardly from said upper portion, each of said pegs being sized and arranged so as to be able to support a baby bottle; and

at least two axles, each of said axles being connected to at least two of said pegs for mounting said pegs for common arcuate movement between a first storage position, wherein said entire peg is positioned substantially adjacent to said upper portion for storage and packaging of said apparatus, and a second, operative position, and wherein said axles are oriented so that movement of said pegs on a first of said axles when moving from said first storage position to said second operative position is substantially in the same rotational direction as movement of said pegs on a second of said axles when moving from said first storage position to said second operative position.

14. An apparatus according to claim 13, further comprising a cutout area on a side of said apparatus for facilitating lifting of said apparatus by a user.

15. An apparatus according to claim 14, wherein said cutout area is positioned beneath said one end of said upper face.

XI. EVIDENCE APPENDIX

There have been no submissions of evidence under 37 C.F.R. §§ 1.130, 1.131 or 1.132 in this reissue application.

XII. RELATED PROCEEDINGS APPENDIX

There have been no related decisions rendered by a court or the USPTO Board of Appeal and Interferences in this matter.